

From: [Guerry, William M.](#)
To: [HertzWu, Sara](#)
Cc: [Mills, Clarissa](#); [Mike Major](#); [Terriquez, Joe](#); [Hensley, Dave](#); [TSommer@BOETeams.com](#)
Subject: Re: Big Ox
Date: Monday, August 13, 2018 12:31:44 PM

Sara
Terrific. Thanks

Sent from my iPhone

On Aug 13, 2018, at 1:22 PM, HertzWu, Sara <HertzWu.Sara@epa.gov> wrote:

Bill: Let's chat at 3:30 CST today. Call-in number is 913-551-7519; Passcode 100200.

Thanks.

From: Guerry, William M. [<mailto:WGuerry@KelleyDrye.com>]
Sent: Monday, August 13, 2018 10:42 AM
To: HertzWu, Sara <HertzWu.Sara@epa.gov>; Mills, Clarissa <mills.clarissa@epa.gov>
Cc: Mike Major <mmajor@powerfulcompliance.com>; Terriquez, Joe <terriquez.joe@epa.gov>; Hensley, Dave <Hensley.Dave@epa.gov>
Subject: RE: Big Ox

Sara—I think it would be helpful if we could set up a short call later today or tomorrow. We have some technical questions regarding EPA's expectations on the detection levels of the monitoring equipment. thanks

WILLIAM GUERRY
Partner

Kelley Drye & Warren LLP
Tel: (202) 342-8858
Cell: (301) 318-8719
wguerry@kelleydrye.com

From: HertzWu, Sara [<mailto:HertzWu.Sara@epa.gov>]
Sent: Monday, August 13, 2018 9:53 AM
To: Guerry, William M. <WGuerry@KelleyDrye.com>; Mills, Clarissa <mills.clarissa@epa.gov>
Cc: Mike Major <mmajor@powerfulcompliance.com>; Terriquez, Joe <terriquez.joe@epa.gov>; Hensley, Dave <Hensley.Dave@epa.gov>
Subject: RE: Big Ox

Bill: Since we missed the chance to touch base last week, if your client still has questions that we can work with you on today or tomorrow to insure the monitoring

equipment is properly installed, we can set a call for today or tomorrow. Otherwise, we can plan to touch base on Wednesday.

Thank you.

Sara Hertz Wu
Assistant Regional Counsel
EPA Region VII
11201 Renner Boulevard
Lenexa, Kansas 66219
Phone: (913)551-7316
Email: hertzwu.sara@epa.gov
Fax: (913) 551-7925

From: Guerry, William M. [<mailto:WGuerry@KelleyDrye.com>]
Sent: Monday, August 13, 2018 5:39 AM
To: Mills, Clarissa <mills.clarissa@epa.gov>
Cc: HertzWu, Sara <HertzWu.Sara@epa.gov>; Mike Major
<mmajor@powerfulcompliance.com>
Subject: Re: Big Ox

Clarissa—thanks for your email. Could we set up a short call sometime today or tomorrow? Thanks

Sent from my iPad/ Please excuse typos
Work (202) 342-8858
Cell (301) 318-8719

On Aug 9, 2018, at 9:58 AM, Mills, Clarissa <mills.clarissa@epa.gov> wrote:

Bill:

I have been assisting Sara on this matter and would be happy to schedule a time to further discuss your questions below Friday or possibly today.

As Sara noted, she is out for the remainder of the week for depositions. I assisted with the 114 and could elaborate on the substantive basis for the monitoring specifications detailed in the 114 and the suggested levels for notification discussed on Monday and in Sara's email. We want to ensure that your client clearly understands our concerns and request for the monitoring information.

Best,
CHM

Clarissa Howley Mills
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From: HertzWu, Sara
Sent: Wednesday, August 08, 2018 8:49 PM
To: Guerry, William M. <WGuerry@KelleyDrye.com>
Cc: Mike Major <mmajor@powerfulcompliance.com>; Rob Ernest (RErnest@bigoxenergy.com) <RErnest@bigoxenergy.com>; Bill Tyndall <btyndall@netleasecapital.com>; Weekley, Erin <weekley.erin@epa.gov>; Hensley, Dave <Hensley.Dave@epa.gov>; Mills, Clarissa <mills.clarissa@epa.gov>; Terriquez, Joe <terriquez.joe@epa.gov>; John Foscatto (JFoscatto@boeteams.com) <JFoscatto@boeteams.com>
Subject: RE: Big Ox

Bill: EPA cannot recommend any particular monitor, monitoring equipment, or monitoring vendor. We believe the monitor specifications stated in the August 6, 2018 114 Monitoring Order, Questions 2-4, should be adequate to guide Big Ox in selecting the appropriate monitoring equipment. It is my understanding that on the Monday call some limits for the monitors were suggested:

- For h₂s - at 50 ppm at the fenceline, which is the peak permissible limit
- For methane - at some percent below the LEL - 10% of the methane LEL at the fenceline, and also when BOE is evacuating any part of the facility

Big Ox's Emergency Action Plan does set area evacuation levels at 50 ppm hydrogen sulfide and 10% LEL for methane. Further, EPA believes that if Big Ox uses an H₂S monitor that was capable of detecting in the ppb range, Big Ox would likely be able to better understand and predict odor complaints from the community.

We would be happy to discuss this further with you during our call on Wednesday. We will also have some additional questions related to the 114 response.

I am in depositions the remainder of the week, but will be available by email.

Regards,

Sara Hertz Wu
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From: Guerry, William M. [<mailto:WGuerry@KelleyDrye.com>]
Sent: Wednesday, August 08, 2018 3:28 PM
To: HertzWu, Sara <HertzWu.Sara@epa.gov>
Cc: Mike Major <mmajor@powerfulcompliance.com>; Rob Ernest (RErnest@bigoxenergy.com) <RErnest@bigoxenergy.com>; Bill Tyndall <btyndall@netleasecapital.com>; Weekley, Erin <weekley.erin@epa.gov>; Hensley, Dave <Hensley.Dave@epa.gov>; Mills, Clarissa <mills.clarissa@epa.gov>; Terriquez, Joe <terriquez.joe@epa.gov>; John Foscatto (JFoscatto@boeteams.com) <JFoscatto@boeteams.com>
Subject: RE: Big Ox

Sara

Thanks for your last email.

Can you or Joe please send us a link or description of the type or model of continuous H2S monitors that EPA believes to be appropriate for the BOE facility. We will also appreciate you letting us know about vendors that sell this equipment so that BOE can price it out.

Can you also please let me have EPA's thoughts on the detection levels for this equipment that EPA believes should trigger notification to the Fire Department and the neighbor on the adjoining property, as well as the substantive basis for these levels? If EPA has required such levels at other facilities, can you identify those facilities so that BOE can have a better technical understanding of this requirement and how it has worked

in practice.

Sara, I would welcome a short call to have a dialogue on these questions. We look forward to our call next week. I will also get back to you on some alternative dates for a face to face meeting.

Best, Bill

From: HertzWu, Sara [<mailto:HertzWu.Sara@epa.gov>]
Sent: Wednesday, August 08, 2018 9:46 AM
To: Guerry, William M. <WGuerry@KelleyDrye.com>; Weekley, Erin <weekley.erin@epa.gov>
Cc: John Foscatto (<JFoscatto@boeteams.com> <JFoscatto@boeteams.com>; Bill Tyndall <btyndall@netleasecapital.com>; Mills, Clarissa <mills.clarissa@epa.gov>; Terriquez, Joe <terriquez.joe@epa.gov>; Hensley, Dave <Hensley.Dave@epa.gov>
Subject: RE: Big Ox

Bill: Thank you for your email. The installation of fenceline monitoring provides an important safety precaution and will yield useful information. We are available for a conference call at 3p m on August 15. The conference code is included below. Please send us a few dates of your availability for a meeting in late August.

Conference line information: August 15, 3 pm CST/4 EST
913-551-7519
Passcode: 100200

Regards,

Sara Hertz Wu
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Email: hertzwu.sara@epa.gov
Fax: (913) 551-7925

From: Guerry, William M. [<mailto:WGuerry@KelleyDrye.com>]
Sent: Tuesday, August 07, 2018 5:04 PM
To: HertzWu, Sara <HertzWu.Sara@epa.gov>; Weekley, Erin <weekley.erin@epa.gov>
Cc: John Foscatto (<JFoscatto@boeteams.com> <JFoscatto@boeteams.com>;

Bill Tyndall <btyndall@netleasecapital.com>; Mills, Clarissa
<mills.clarissa@epa.gov>; Terriquez, Joe <terriquez.joe@epa.gov>;
Hensley, Dave <Hensley.Dave@epa.gov>
Subject: RE: Big Ox

Sarah and Erin,

Per Sara's follow-up email this afternoon, let's set up a call next Wednesday afternoon at 2:00 or 3:00 Central. Per your suggestion, BOE will as a further safety precaution—install at the fence line continuous H2S monitoring equipment. BOE is in the process this week of searching for the most appropriate monitoring equipment and vendor.

On behalf of BOE we are grateful for your setting up yesterday's conference call and providing us with an advance courtesy notice regarding EPA's new information request. BOE fully appreciates EPA's concerns, and wants to proactively work with EPA. As we discussed, we appreciate receiving whatever new data EPA is now relying on or plans to rely on in its ongoing evaluation so that we have the chance to analyze that data and discuss it with you. BOE wants to better understand the technical basis of all of EPA's concerns, so that we can more effectively respond to those concerns. In this context, BOE is not aware of any prior or current exceedances or violations of any ambient air standard that would apply at the BOE fence line. BOE of course takes the issue or worker and community safety very seriously. If credible and representative data shows any type of violation or exceedance of an applicable standard, BOE will of course expeditiously take further actions pursuant to the direction of both NDEQ and EPA as appropriate.

As we discussed, and as noted in Sara's email today, I also would like to set up a call or face-to-face meeting later this month to provide a broader briefing to EPA Region 7 on the overall compliance status of BOE as well as its successful implementation over the last year of the CAA-GDC formal compliance plan that BOE developed with EPA's help in the Spring of 2017. We look forward to our call on Wednesday.

Thanks,
Bill Guerry

From: HertzWu, Sara [<mailto:HertzWu.Sara@epa.gov>]
Sent: Tuesday, August 07, 2018 4:22 PM
To: Guerry, William M. <WGuerry@KelleyDrye.com>

Cc: Mills, Clarissa <mills.clarissa@epa.gov>; Terriquez, Joe
<terriquez.joe@epa.gov>; Hensley, Dave <Hensley.Dave@epa.gov>
Subject: Big Ox

Bill: I know we had planned to talk early next week. Do you and your client have availability on Wednesday (8/15) or Thursday (8/16)? We would like to talk through the 114 response and hear an update on the monitoring.

Regards,

Sara Hertz Wu
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